

# **Sample Contract Template for DPM as Associate**

**From the AAPPm Resource Center**



**American Academy of Podiatric Practice Management**

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# Employment Agreement

This Employment Agreement is made this \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_, DPM doing business as \_\_\_\_\_ (hereinafter called the “Employer”) and \_\_\_\_\_ (hereinafter called the “Associate”).

## Recitals

WHEREAS, the Employer is a duly organized professional service corporation organized under the laws of the State of \_\_\_\_\_ and, through its professional employees, is engaged in the business of furnishing podiatric medical services to the general public, and desires to hire the Associate to assist the Employer in the practice of podiatric medicine; and

WHEREAS, the Associate is a duly qualified podiatrist licensed to practice podiatric medicine under the laws of the State of \_\_\_\_\_ and is fully acquainted with the nature of the proposed employment and desires to become associated with the Employer in the practice of podiatric medicine in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual Promises herein contained, the Employer and the Associate, intending legally to be bound, agree as follows:

1. **Employment.** The Employer hereby employs the Associate, and the Associate hereby accepts employment with the Employer upon the terms and conditions hereafter set forth.
2. **Term.**
  - 2.1 **Definitions.** Each twelve (12) month period of employment commencing on the \_\_\_\_ day of \_\_\_\_\_ is called a “Contract Year.” The entire period of the Associate’s employment is called the “Term.” The obligations of the Employer contained in this Agreement shall apply only during the Term, except for those provisions, which specifically provide otherwise. All representations and warranties of the Associate shall survive the expiration or sooner termination of the Term.
  - 2.2 **Initial Term.** Subject to the provisions for termination pursuant to the Section of this Agreement entitled “Termination of Employment,” the period of the Associate’s employment shall begin on the \_\_\_\_ day of \_\_\_\_\_, and shall continue for a period of twelve months, ending on the \_\_\_\_ day of \_\_\_\_\_.
  - 2.3 **Extension.** Any extension must be on terms which are satisfactory to the Employer, in the Employer’s sole and absolute discretion; and the Employer, in the Employer’s sole and absolute discretion, shall have the choice of offering or not offering to extend the Term. If the Associate continues in the employ of the Employer after the initial term of employment, this contract will be extended or revised based on sole discretion of Employer.
3. **Compensation.**
  - 3.1 **Amount.** During the term of this Agreement, the Associate shall be an employee and receive a salary in the amount of \$90,000 (ninety thousand dollars) per year from all offices associated with \_\_\_\_\_. Payment will be made by the Employer to the Associate in accordance with regular paydays. The Associate’s salary shall be without recourse but shall be paid to the Associate only while the Associate is employed by the Employer regardless of the Associate’s level of Collections. In the event the Employer or the Associate terminates the Agreement during a payroll period, the Associate’s salary shall be prorated in accordance with the number of days worked during the payroll period.

- 3.2 Associate “Collections” Defined.** As used in this Agreement, the Associate’s “Collections” are the fees actually collected by the Employer, whether during or after the Term, for the services rendered by the Associate.
- 3.3 Additional Compensation.** The podiatrist shall be compensated for a percentage of collectables as per office policy generated by major surgical services not including surgical assistants as defined below (major surgical services are those hospital based procedures incorporating bone/soft tissue reconstructive procedures). The amount of compensation is 20% of the monies collected for the billed procedures, on a case-by-case basis as determined by the Practice. The Podiatrist is to maintain records and is to account for her own additional compensation and be presented to the Practice very three months. The Practice shall be responsible to pay and deduct all federal, state, and social security taxes on all earned compensation as per salary agreement and accepted employer/employee standards.
- 3.4 Withholding.** The Employer is authorized to withhold from the salary, bonuses, and any other things of value paid to or for the benefit of the Associate, all sums authorized by the Associate or required to be withheld by law, court decree, and executive order, including (but not limited to) such things as income taxes, employment taxes, and employee contributions to benefit plans sponsored by the Employer.

#### **4. Duties and Responsibilities**

- 4.1 Duties.** The Associate shall be employed by the Employer as a podiatrist, and in that position, the Associate’s duties shall include, but not be limited to, (i) the rendering of professional care and services to the Employer’s patients in accordance with accepted standards of care; (ii) assistance in the establishment and maintenance of clientele and the promotion of the practice; (iii) the performance of administrative duties reasonably assigned to the Associate from time to time; and (iv) the attendance at staff meetings, unless excused by the Employer, (v) taking such steps as may be necessary to obtain medical staff memberships and appropriate clinical privileges at such hospitals, surgery centers, nursing homes, and/or other ancillary facilities as well as steps necessary for managed care participation as the Employer may deem appropriate.
- 4.2 Employment Working Schedule.** The Associate shall work exclusively and actively on a full-time basis for the Employer. To that end, the Employer shall develop a working schedule for the Associate, subject to change by written notice, at Employer’s sole discretion. In addition, the Associate shall be available for emergency coverage on weekends, holidays, and evenings as reasonable directed by the Employer.
- 4.3 Office Policy.** The Employer shall have the right from time to time to monitor the work of the Associate. The Employer shall have (i) the right to determine the assignment of patients to the Associate, (ii) the right to specify the duties to be performed by the Associate, and when these duties are to be performed, (iii) the right to specify reasonable clinical pathways and/or protocols to be followed, (iv) the right to require sufficient documentation to develop viable outcome studies, (v) the right to develop reasonable office policies regarding fee levels, courtesies, scheduling, management techniques, and other matters affecting the Employer’s practice clinically or administratively.
- 4.4 Standard of Care.** The Associate shall perform all of the Associate’s duties and obligations under this Agreement and shall render all professional services in accordance with the highest professional and ethical standards established for the podiatric profession, and the Employer may review any treatment performed by the Associate to assure that the treatment satisfies those standards. However, the Associate shall not be obligated to perform any procedure, which the Associate reasonably feels may compromise the Associate’s professional ideals and judgment.

- 4.5 Best Efforts.** All duties assigned to the Associate shall be fully and faithfully performed, and the Associate shall devote the Associate's best efforts on behalf of the Employer.
- 4.6 Medical Records.** The Associate is responsible for completing all patients' records and charting by the end of each day.
- 4.7 No Services to Others.** The Associate shall not provide podiatric medical services to others or engage in any other podiatric practice without the prior written consent of the Employer. If the Employer consents, all fees, compensation, and other things of value charged, received, and realized by the Associate as a result of that other business or practice shall be paid and delivered to the Employer, unless the Employer waives, in writing, the right to receive these amounts. Employment during the Term with another business or practice shall not relieve the Associate of the obligation to observe Sections 12 and 13, which if ignored, could serve to threaten the Employer's practice in the context of the restrictions stated in these Sections.

## **5. Vacations, Holidays, and Other Time Off.**

- 5.1 Holidays.** The Associate shall be entitled to time off during any holidays on which the Employer's office is customarily closed, unless the Associate's schedule has dictated otherwise, as per Section 4.2 of this agreement.
- 5.2 Leave Time.** The Associate shall be entitled to a total of ten (10) working days of leave time during each Contract Year without an adverse effect on base salary amount. This leave time may be used for any combination of vacation, sick or personal needs.

The Associate shall give to the Employer at least thirty (30) days advance notice and receive written approval from the Employer before taking leave for any reason other than illness. The Employer shall grant permission to the Associate for the requested time off provided there is no interference with normal office operations. The Associate shall receive a prorated decrease in salaried pay for any time missed in excess of the time allowed for vacation, sick or personal needs during each Contract Year.

- 5.3 Allowable Accrued Leave Time.** All accrued time off allowed for vacation, sickness or personal needs shall not exceed ten (10) days during the Term, at the sole discretion of the Employer.
- 5.4 Unused Leave Time.** Upon termination of the Associate, the Associate shall be entitled to compensation for any unused leave time, not to exceed an accrued total of ten (10) days during the Term, with compensation determined by prorated base salary only. Prorated time will be determined by dividing the yearly base salary (\$\_\_\_\_\_) by 52, then by 5, for a daily-prorated gross compensation amount of \$\_\_\_\_\_. This gross amount will be subject to all Employer required withholding.
- 5.5 Make up Time.** Should the Associate miss time in excess of vacation, sick and personal time allowed, the Employer shall have the prerogative, should the Associate request same, to either allow or disallow the Associate to make up excess time missed.

## **6. Fringe Benefits.**

- 6.1 Continuing Education.** Upon substantiation of the amount paid, the Employer shall reimburse the Associate for the cost of registration and materials for continuing podiatric medical education programs selected by the Associate, up to a maximum of eight hundred dollars (\$800) in each Contract Year, subject to prior approval by Employer. This amount shall be non-accumulative from one Contract Year to another. If the Employer requires the Associate to attend any programs in addition to those selected by the Associate, then the Employer shall also reimburse the Associate for the cost of registration and materials for those programs.

Additionally, those programs selected by the Employer shall not be counted against any of the Associate's leave time or against any annual allowance provided to the Associate by the Employer for those courses selected by the Associate.

- 6.2 Health Benefits.** Health Benefits will be provided to the Associate by the Employer as part of the practice's group health care plan. The Associate shall be permitted to include any of the Associate's immediate dependents in the health care plan with additional costs of such coverage paid by the Associate. Immediate dependents shall be defined as limited to spouse and children living in the same household. The Employer retains the right to change health care plan carriers at her sole discretion, in the best interests of the practice. Employer shall, however, continue to provide Associate with comparable benefits throughout the Term.
- 6.3 Dues.** Upon proper verification of same, the Employer agrees to reimburse the Associate for annual dues for membership in the American Podiatric Medical Association and the New Jersey Medical Society.
- 6.4 Pension Plan.** If eligible to do so, the Associate may participate in any pension plan maintained by the Employer. Contributions shall be made to the pension plan by the Employer for the Associate in accordance with pension plan requirements for all employees.
- 6.5 Employee Profit Sharing Plan.** In the event that the Employer institutes a merit or performance-based profit sharing plan or bonus system for employees, in addition to any extant pension plan, the Associate shall not be included in same, as a merit-based bonus plan is included in Section 3.3 of this contract.
- 6.6 Hepatitis B Vaccine.** The Employer shall pay for the cost of providing the Associate with the Hepatitis B vaccine and any tests required by law for employees.

## **7. Professional Liability (Malpractice) Insurance.**

- 7.1 Coverage.** The Associate shall maintain professional liability (malpractice) insurance protecting the Associate while rendering services on behalf of the Employer. The insurance shall be in an amount and with an insurer approved by the Employer. In addition, the policy shall provide that it will not be materially modified or canceled without at least thirty (30) days prior written notice to the Employer. The Employee shall pay for the cost of this insurance to the extent of any premiums due and shall continue to pay this premium only while the Associate is employed by the Employer. If the Employer at any time requests, the Associate shall provide the Employer with a copy of the policy and evidence that it is in full force and effect.
- 7.2 No Extended Reporting Endorsement.** If the Associate maintains professional liability insurance on a "claims made" basis, then the Employer shall have no obligation, upon termination of the Associate, to purchase or provide any professional liability insurance or an extended reporting endorsement for the Associate. The Associate agrees that he shall, upon termination of the Associate's employ with the Employer, continue to maintain professional liability insurance whether it be in the form of continued coverage with the same insurance carrier or the acquisition of an extended reporting endorsement. In any case, the insurance purchased by the Associate shall be adequate to ensure that the Associate is covered indefinitely for all treatment performed by the Associate while in the employ of the Employer. In the event the Associate fails to fulfill her obligations pursuant to this paragraph 7.2 to the satisfaction of the Employer, the Employer shall be authorized to withhold any monies owed to the Associate in an amount required to the purchase of such insurance to cause such compliance.
- 7.3 Disability Insurance.** The Associate shall provide, at her own expense, disability insurance with sufficient coverage to satisfy the Employer and protect the practice.

## 8. Business Expenses.

- 8.1 Support Expense.** The Employer shall pay or provide for all of the following:
- 8.1.1** All customary office expenses, including one hundred (100%) percent of the Associate's laboratory fees which the Associate reasonably incurs in connection with the performance of Associate's duties hereunder;
  - 8.1.2** Podiatric medical equipment, supplies, and instruments, which are reasonably required in connection with the performance of the Associate's duties hereunder;
  - 8.1.3** Treatment rooms for providing podiatric medical services;
  - 8.1.4** Full support of the office staff;
  - 8.1.5** A dictaphone or other portable dictating or computer input device;
  - 8.1.6** Hospital and surgical center application costs and dues;
  - 8.1.7** Managed care contract application costs;
  - 8.1.8** Managed care organization and IPA costs.
- 8.2 Supplies.** The Associate shall obtain the written approval of the Employer in accordance with extant office purchasing or finance policies before purchasing any supplies or making any other expenditure on behalf of the Employer. Should the Associate make purchases without written approval, liability for payment for those purchases will rest with the Associate.
- 8.3 Marketing.** The Employer shall (i) provide business cards for the Associate; and (ii) place the Associate's name on all office signs. After the first three (3) months of the Term or at the next ordering period, whichever comes first, the Employer shall place the Associate's name on all subsequently ordered letterheads and business forms on which the name of Affiliated Foot and Ankle Center, LLP appears.

## 9. Relationship and Indemnification.

- 9.1 Employment Relationship.** The Associate is and at all times shall be an employee of the Employer and not a partner, agent, independent contractor, stockholder, or joint venture with the Employer in the practice of podiatric medicine.
- 9.2 Indemnification.** If any claim or demand is made by a third party against the Employer or its officers, directors, or stockholders as a result of the Associate's failure to perform her obligations under this Agreement or as a result of any action or omission of the Associate, then the Associate shall save, defend, indemnify, and hold the Employer and its officers, directors, and stockholders harmless from and against the claim or demand and any costs or expenses (including reasonable attorney fees) suffered or incurred by the Employer and its representatives.

- 10. Billing and Collection.** All fees and other amounts paid or given to the Associate or the Employer for professional services rendered by the Associate while in the employ of the Employer related to services performed for a patient in the Employer's practice, including without limitation, fees for consultations, assistant fees, examinations, reports, testimony, treatment, operations, teaching, and lectures, are the sole property of the Employer and shall be promptly turned over to the Employer.

The Employer shall have the right to bill for all professional services rendered by the Associate at rates from time to time established by the Employer. During and after the Term mail addressed to the Associate at the Employer's place of business may be opened by other employees of the Employer. During the Term, mail that appears not to relate to the Employer may be promptly forwarded to the Associate. Checks made payable to the Associate, but belonging to the Employer, may be endorsed in the Associate's name by the Employer or the Employer's designee and deposited to the Employer's credit. After the Term, business mail addressed to the Associate involving matters still being handled by the Employer may be answered by other employees of the Employer without notice to the Associate. During and after the Term, the Associate agrees to return to the Employer any mail addressed to the Associate but intended for the Employer.

Furthermore, the Associate shall be responsible for reimbursement to the Employer of any payments made by the Employer to or on behalf of the Associate from revenues received by the Employer which have been disallowed by a third party payor. This amount shall be paid in full within thirty (30) days following notice by the Employer to the Associate.

## **11. Termination of Employment**

**11.1 By Either Party.** During the course of this Agreement, either party shall have the right to terminate this Agreement without reason or cause upon giving at least ninety (90) calendar days' written notice to the other party. The intent and understanding of both the Employer and the Associate is that, despite invocation of this section of the Agreement, all other terms of this Agreement shall remain in full force and effect.

**11.2 Automatic.** The employment of the Associate will terminate automatically and immediately (without any necessity of notice) if:

**11.2.1** the Associate dies; or

**11.2.2** the Employer's practice is sold or liquidated, or an Order for Relief is entered with respect to the Employer under the Bankruptcy Code, or a receiver is appointed for the Employer, or

**11.2.3** if the Associate is unable because of physical or mental illness or injury, to perform the Associate's duties hereunder for more than ninety (90) days, whether or not consecutive, in any Contract Year.

**11.3 Termination by Employer With Cause.** The Employer, upon five (5) days' prior written notice, may at the Employer's option, terminate the Associate's employment, and halt immediately or at any time thereafter, if the Associate:

**11.3.1** fails or refuses to faithfully and diligently perform the Associate's usual and customary duties to the Employer or to adhere to the provisions of this Agreement; or

**11.3.2** fails or refuses to comply with the reasonable policies, standards and regulations established by the Employer from time to time; or

**11.3.3** is found guilty of unprofessional, unethical, immoral or fraudulent conduct by any board, institution, organization or professional society having any privilege or right to pass upon the conduct of the Associate, or if the Associate resigns from any professional organization, institution or society under threat of disciplinary action for that conduct; or

**11.3.4** becomes uninsurable for professional liability insurance; or

**11.3.5** willfully or intentionally injures the Employer or its assets; or

**11.3.6** steals or embezzles from the Employer; or

**11.3.7** breaches any negative covenant in this Agreement; or

**11.3.8** is intoxicated while practicing podiatric medicine, or

**11.3.9** abuses drugs; or

**11.3.10** is convicted of a misdemeanor, other than a traffic violation, which in the reasonable judgment of the Employer, reflects adversely on the reputation of the Employer, or is convicted of a felony; or

**11.3.12** has falsely made any representation and warranty contained in Section 16; or

**11.3.13** the Associate attempts to assign her duties under the Agreement; or if the following occurs:

**11.3.14** the imposition of any restriction or limitation by any governmental authority having jurisdiction over the Associate which prevents the Associate from engaging in the practice of podiatric medicine, or

**11.3.15** the suspension, revocation, or cancellation of the Associate's right to practice podiatric medicine in the State of New Jersey, or

**11.3.16** if the Associate acts in a manner so as to create conflicts with the Employer, its stockholders, officers, directors, employees, and/or patients resulting in a generalized

environment of discontent in the practice and/or having a negative impact on practice business.

**11.4 Completion of Treatment in Progress.** If the Associate's employment terminates, then notwithstanding the termination: (i) the Employer may require the Associate to complete the treatment of any patient whose treatment is incomplete if the Employer believes that the Associate's failure to complete the treatment will jeopardize the patient's physical or mental health; and (ii) the Associate may complete the treatment of a patient if the Associate reasonably believes that her failure to complete the treatment will jeopardize the patient's physical or mental health. If the Associate completes the treatment of a patient pursuant to this section, the Associate shall do so promptly and shall not interfere with the Employer's practice or patients or damage any of the Employer's property. The obligation or right as the case may be, to complete treatment set forth in this Section shall be a waiver of the restraint under Section 13 as to the particular instance only.

## **12. Podiatric Medical and Financial Records.**

**12.1 Property of the Employer.** All financial records pertaining to the Employer's practice, personnel records pertaining to the Employer's employees, patient lists, and podiatric medical records pertaining to patients treated by the Associate and the Employer's other professional employees, including, but not limited to patient files, charts, X-rays, any and all reports known collectively as the "Records," and clinical and/or administrative policies, protocols, trials, outcomes, outcome studies, clinical pathways or guidelines, are the sole and exclusive property of the Employer.

**12.2 Return of the Property.** Upon termination of the Associate's employment, the Associate shall deliver to the Employer all Records and other property of the Employer, including, without limitation, all equipment, supplies, and instruments, which came into the Associate's possession during the Associate's employment and have not been returned to the Employer. Similarly, upon the termination of the Associate's employment, the Employer shall return to the Associate all documents and property of the Associate which came into the Employer's possession during the Associate's employment and have not been returned to the Associate, provided that the Associate has maintained a current list of the Associate's documents and property and has deposited it with the Employer. Should the Associate request same, the documents and property returned to the Associate may include the names and records of specific patients whom the Associate treated prior to the Associate's employment with the Employer. The Associate shall ensure that copies of all of these names and records are provided to the Employer upon initiation of the Associate's employment with the Employer.

"Termination Date" is defined as the date that the Associate ceases to be employed by the Employer.

**13. Restrictions.** The parties hereto recognize the unique position which the podiatry practice conducted by them has and will have in the Ocean and Monmouth counties of the State of New Jersey, for the area nursing homes and other residential or custodial care units for the elderly or impaired for which the Employer is a service provider, and for sports medicine centers, wound care centers and other ancillary facilities such as focused procedure centers and ambulatory surgical centers that may be in existence at the time of termination. The Associate acknowledges the significant investment in time, money, expertise and energy expended and required of the Employer in fulfilling its commitments under this Agreement and any prior Professional Employment Agreements with Associate. For these reasons, the parties agree that upon termination of Associate's employment, for any reason, including expiration of the Term hereof without continued employment of the Associate, the Associate shall not, for a period of three (3) years from the date of termination, engage in the practice of podiatry, either directly or indirectly, whether for himself or for any other person, firm, corporation, partnership, or other entity, as principal, agent, stockholder, partner, joint venture, officer, employee, member, director, sole proprietor, and shall not violate any of the covenants stated in Section 13 or he shall



pay to the Employer \$\_\_\_\_\_ for lost income to the Practice and shall forfeit, as of the first day he shall engage in such prohibited practices, any and all payments otherwise due to him under the provisions of Section 3 hereof. Further, the Associate covenants and agrees that in the event he fails to pay such a sum, the Employer shall be entitled to injunctive relief as stated in Section 14.1 of this Agreement and any objection thereto is hereby waived. The provisions contained in this Section shall survive the expiration or termination of this Agreement as provided in Section 2 and Section 11 hereof.

**13.1** The Associate agrees not to:

**13.1.1** engage in, conduct, establish, or maintain the practice of podiatric medicine for any private or hospital podiatric treatment or diagnostic facility, podiatric or other related ancillary facility, including sports medicine, focused procedure or wound care facility, home health, nursing home or other residential or custodial care unit for the elderly or the impaired, situated within a radius of a circle of ten (10) miles for a period of three years of any office of the Employer including but not limited to the \_\_\_\_\_ office and interests of \_\_\_\_\_, it is expressly understood and agreed to by the parties that this covenant not to compete remains in effect regardless of whether the \_\_\_\_\_ office and \_\_\_\_\_ remain associated with \_\_\_\_\_

**13.1.2** solicit in any manner, including advertising, any existing patient to use the podiatric medical services of the Associate or any person or entity with whom or with which the Associate is affiliated; provided, however, that advertisement in a telephone directory shall not be deemed to be a violation of this restriction if the Associate has not violated and thereafter does not violate the covenant contained in Section 13 and if that advertising is limited to any listing provided at no additional charge to customers by the telephone company; or

**13.1.3** make any disparaging remarks or other similar communications regarding the Employer or its stockholders, officers, directors, or employees, or

**13.1.4** Hire as an employee or engage as an independent contractor, for the purpose of having that person perform the services which that person performed for the Employer or any other related services to the practice of podiatric medicine, any individual who was employed by the Employer or who, as an independent contractor, worked primarily for the Employer at any time during the Pre-Termination Period. As compensation to the Employer for the hiring of such an individual, the Associate shall compensate the Employer \$10,500, the agreed-upon loss that would be incurred by the Employer for hiring and training a suitable replacement, in addition to any other compensation for covenant violation stated in Section 13; or

**13.1.5** Take any other action whatsoever which may disturb the Employer's relations with any of its patients, stockholders, officers, directors, or employees.

**13.1.6** Continue any relationship with any nursing home or other facility for which the Associate rendered services on behalf of the Employer.

**13.2 Survival of Terms.** Because the Employer and the Associate perform similar podiatric medical services for the public, the Associate hereby acknowledges that the obligations and restrictions contained in Sections 12 and 13 are necessary in order to protect the goodwill of the Employer's practice and are reasonable. However, if any court determines that any of those obligations or restrictions are unenforceable in accordance with its terms regarding duration, geographical limit or scope of prohibited activity, then the remaining obligations or restrictions of this Agreement shall not terminate.

**13.3 Extension.** If the Associate violates any obligation or restriction set forth in Sections 12 or 13, the Employer shall not be deprived of the full benefit of the obligation or restriction. Accordingly,

the duration of the obligation or restriction shall be extended by the period of any violation of that obligation or restriction.

#### **14. Remedies.**

**14.1 Equitable Relief.** In the event of a breach of any of the obligations or restrictions set forth in Sections 12 or 13, the Employer shall be entitled to seek injunctive or other equitable relief including, but not limited to, a temporary restraining order, a preliminary injunction and a permanent injunction, because the Employer will be caused irreparable injury and damage as a result of the breach.

**14.2 Expenses.** If the Employer brings an action to enforce any of the obligations or restrictions set forth in Sections 12 or 13 and is the prevailing party, then the Associate shall pay all of the Employer's reasonable investigative costs, its court costs, and its reasonable fees of counsel. The Employer shall not be required to post a bond or any similar assurance if the Employer brings any action in order to enforce any of the obligations or restrictions contained in those Sections.

#### **15. Ownership Option.**

**15.1 Criteria.** It is understood that in order for the Associate to gain an ownership position in the practice, both the Associate and the Employer must feel that there is a clearly demonstrated ability for each to work together with good rapport and understanding. Additionally, in the opinion of the Employer, the Associate shall have satisfied the following criteria.

- a. The Associate must be able to pay the full purchase price of offered ownership interest in the practice, either directly or through non-Employer financed funding;
- b. The Associate must be accepted by patients, colleagues and staff;
- c. The Associate must be productive within reasonable and agreed upon revenue ranges;
- d. The Associate must demonstrate effectiveness in promoting the practice and recruiting new patients;
- e. The Associate must demonstrate effectiveness and acceptance in sharing administrative burdens assigned him;
- f. The Associate must be willing to provide the Associate's time in a fully committed manner;
- g. The Associate must maintain her certification with the American Board of Podiatric Surgery, current memberships, her continuing medical education requirements and her hospital and staff privileges;
- h. The Associate must demonstrate a commitment to improving her medical and administrative skills;
- i. The Associate must complete the initial term of her employment as described in paragraph 2.2 herein.

The aforementioned criteria are only guidelines to be used for determining the Associate's qualifications for an eventual ownership position. They are not to be construed as a commitment on the part of the Employer to provide the Associate with an ownership position in the practice, whether or not the Associate substantially meets these guidelines.

**15.2 Valuation.** In the event that a buy-in of an ownership interest shall occur by the Associate, the structure of any buy-in agreement will be the subject of a separate agreement to this Employment Agreement. The Employer will covenant that any such separate agreement will exclude the Associate's contribution to the practice's revenue stream in any valuation of the practice undertaken for the purposes of determining purchase price of ownership interest offered. If an offer is made by the Employer to the Associate, remaining terms will have to be decided. After reasonable discussion, if the terms cannot be worked out to the satisfaction of the Employer and the Associate, the Employer shall be free to withdraw the offer.

**16. Associate's Representations.** The Associate represents and warrants that:

- 16.1 The Associate will be available to work for the Employer from and after the date on which the term begins;
- 16.2 The Associate's license to practice podiatric medicine has never been revoked or suspended in any state or the District of Columbia;
- 16.3 The Associate, by a writing delivered to the Employer, has fully informed the Employer (i) whether the Associate is now or has been a defendant in any malpractice proceeding and (ii) whether the Associate is aware of any claims that might give rise to a malpractice proceeding against the Associate; and if there are any such proceedings or claims, the details of each one;
- 16.4 The execution, delivery, and performance of this Agreement by the Associate is neither prohibited by, nor constitutes a default under, any statute, law, judgment, order, decree, writ, injunction, deed, instrument, contract, agreement, lease, license, or permit to which the Associate is a party or by which the Associate is bound;
- 16.5 There is (i) no litigation, proceeding, or investigation of any nature (either civil or criminal) which is pending or, to the best knowledge of the Associate, threatened against or affecting the Associate and (ii) no indictment, judgment, award, order verdict, or decree which has been issued or rendered against or which affects the Associate;
- 16.6 The Associate has not relied upon any representation or statement by any representative of the Employer which is not set forth in this Agreement; and
- 16.7 There is in effect an extended reporting endorsement coverage under the Associate's prior professional liability insurance covering the Associate for periods prior to employment by the Employer.

## 17. Notices.

- 17.1 **How Given.** Notice, demand, consent, approval, request, election, or other communication ("Notice") required or permitted under this Agreement must be in writing and either delivered personally or by overnight delivery service, or sent by certified or registered mail, postage prepaid, return receipt requested. Return receipts must contain the signature or recipient personally, i.e., the Associate or the Employer.
- 17.2 **Where.** If delivered by overnight delivery service or if sent by mail, a Notice must be addressed, in the case of the Employer, to the attention of \_\_\_\_\_ (name and address) or in the case of the Associate, at the last known address of the Associate on the records of the Employer.
- 17.3 **When Effective.** A notice delivered personally to either the Associate or Employer will be effective on the date it is delivered. A notice delivered by overnight delivery service will be effective twenty four (24) hours after the day it is deposited with the overnight service. A notice sent by certified or registered mail with return receipt requested will be effective 24 hours after the date of acceptance signature on the return receipt.
- 17.4 **Changes.** Either party may designate, by written Notice to the other, substitute addressees or addresses for Notices; and thereafter Notices must be directed to those substitute addressees or addresses.

## 18. Miscellaneous.

- 18.1 **Governing Law and Jurisdiction.** This Agreement shall be governed by and consumed and enforced in accordance with the laws of the State of Pennsylvania. The parties submit to the jurisdiction and venue of the Courts of the State of Pennsylvania.

- 18.2 No Jury Trial.** Neither party shall elect a trial by jury in any action, suit, proceeding, or counterclaim arising out of or in any way connected with this Agreement.
  - 18.3 Word Forms.** Where the language of this Agreement is otherwise unambiguous, the meaning shall not be made ambiguous by error in the use of any gender, tense, or conjugation.
  - 18.4 Headings.** All section headings are for convenience purposes only and shall not be construed to change or alter the meaning of any section in this Agreement.
  - 18.5 Amendments.** This Agreement may be amended, waived, changed, modified, or discharged only by a writing signed by the parties.
  - 18.6 Successors.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors, heirs, personal representatives, and other legal representatives, but nothing in this clause shall be construed to allow the Associate to assign her duties under this Agreement.
  - 18.7 Entire Agreement.** This Agreement sets forth the entire Agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements, and understanding, written or oral relating to the subject matter hereof.
  - 18.8 Severability.** In the event that any provision of this Agreement or any word, phrase, clause, sentence or any portion thereof, including, without limitation, the geographical, temporal and patient related restrictions contained in Section 13 should be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Agreement as modified legal and enforceable to the fullest extent permitted under applicable laws.
  - 18.9 Compliance.** Employer's leniency in enforcing strict compliance with any or all Agreement provisions shall not be interpreted as a waiver of any provisions of this Agreement.
  - 18.10 Consent or Approval.** Whenever under the terms of this Agreement, the approval or consent of the Employer is required or the Employer must make any determination, the Employer, unless this Agreement specifically requires otherwise, may withhold or delay that consent or approval or may make that determination, as the case may be, in the Employer's sole and absolute discretion.
  - 18.11 Recitals.** The Recitals are a part of this Agreement.
- 19. Arbitration of "With Cause Dismissal."** Should the Associate contest a "with cause" dismissal, the Employer and Associate shall seek resolution through arbitration by a panel of (3) arbitrators appointed in accordance with the rules of the American Arbitration Association, whose decision will be final and binding upon the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date